

DEPARTMENT OF HUMAN SERVICES

EFFECTIVE DATE: September 24, 2009
DATE REVISED: September 24, 2009

SUBJECT: Policy Prohibiting Workplace Discrimination

I. PURPOSE

The purpose of this Order is to set forth the rights and responsibilities of Department of Human Services' employees as they relate to workplace discrimination, harassment and hostile work environments which are based upon a protected category.

II. SCOPE

This order has Department-wide applicability.

III. AUTHORITY

Age Discrimination in Employment Act
Americans with Disabilities Act
Civil Rights Act of 1964, Title VII
Equal Pay Act
New Jersey Civil Union Act
New Jersey Conscientious Employee Protection Act
New Jersey Domestic Partnership Act
New Jersey Equal Pay Act
New Jersey Law Against Discrimination
New Jersey State Policy Prohibiting Discrimination in the Workplace

IV. POLICY

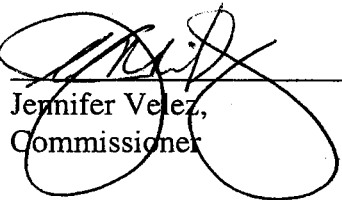
The Department of Human Services shall adopt and incorporate the most recent New Jersey State Policy Prohibiting Discrimination in the Workplace as the departmental policy. This is a "zero tolerance" policy and may set stricter standards for conduct than those required by law. This policy addresses workplace discrimination, harassment and hostile work environment based upon a protected category, and applies to conduct in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed). Employees who violate this policy will be subject to disciplinary action.

- A. A copy of the New Jersey State Policy Prohibiting Discrimination in the Workplace, dated August 20, 2007, is attached hereto as "Attachment A". However, if the State Policy is amended, this Administrative Order will automatically adopt and incorporate the amended, most recent, State policy as the departmental policy. A copy of the current New Jersey State Policy Prohibiting Discrimination has been distributed to every DHS employee and shall be given to every new employee. If the State Policy is amended, a copy of the new State policy shall be distributed to every DHS employee and every new employee.
- B. A copy of the Department of Human Services' Internal Complaint Procedures is attached hereto as "Attachment B".
- C. A copy of the Department of Human Services' Guidelines on Religious Accommodations is attached hereto as "Attachment C".

V. PROCEDURAL HISTORY

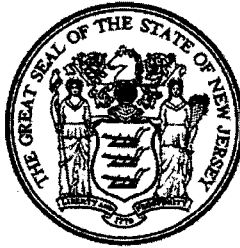
This Administrative Order revises and replaces the Administrative Order 4:01 which was issued and effective July 3, 2000. The Administrative Order 4:01 issued and effective July 3, 2000 superseded and replaced Administrative Order 3:03 (Processing of Discrimination Complaints) and Administrative Order 4:09 (Sexual Harassment).

Date: 9/24/09



Jennifer Velez,
Commissioner

Attachment A



***NEW JERSEY STATE
POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE***

I. POLICY

a. Protected Categories

The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.

To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the state and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

b. Applicability

Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as "State agencies" or "State agency"). The State of New Jersey will not tolerate harassment or

discrimination by anyone in the workplace including supervisors, co-workers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed).

This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

II. PROHIBITED CONDUCT

a. Defined

It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in I (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions and career development.

It is also a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in I(a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

Examples of behaviors that may constitute a violation of this policy include, but are not limited to:

- Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected categories referred to in I(a) above;
- Treating an individual differently because of the individual's race, color, national origin or other protected category, or because an individual has the physical, cultural or linguistic characteristics of a racial, religious, or other protected category;

- Treating an individual differently because of marriage to, civil union to, domestic partnership with, or association with persons of a racial, religious or other protected category; or due to the individual's membership in or association with an organization identified with the interests of a certain racial, religious or other protected category; or because an individual's name, domestic partner's name, or spouse's name is associated with a certain racial, religious or other protected category;
- Calling an individual by an unwanted nickname that refers to one or more of the above protected categories, or telling jokes pertaining to one or more protected categories;
- Using derogatory references with regard to any of the protected categories in any communication;
- Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because that individual belongs to, or is associated with, any of the protected categories; or
- Displaying or distributing material (including electronic communications) in the workplace that contains derogatory or demeaning language or images pertaining to any of the protected categories.

b. Sexual Harassment

It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

- Generalized gender-based remarks and comments;
- Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body or impeding or blocking movement;
- Verbal, written or electronic sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, text messages, invitations, gestures or inappropriate comments about a person's clothing;
- Visual contact, such as leering or staring at another's body; gesturing; displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily-clad individuals; or displaying sexually suggestive material on a bulletin board, on a locker room wall, or on a screen saver;
- Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, or retention;
- Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluation or promotional opportunity; or
- Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

III. EMPLOYEE RESPONSIBILITIES

Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints.

All employees are expected to cooperate with investigations undertaken pursuant to VI below. Failure to cooperate in an investigation may result in

administrative and/or disciplinary action, up to and including termination of employment.

IV. SUPERVISOR RESPONSIBILITIES

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and in the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace (Model Procedures), a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

V. DISSEMINATION

Each State agency shall annually distribute the policy described in this section, or a summarized notice of it, to all of its employees, including part-time and seasonal employees. The policy, or summarized notice of it, shall also be posted in conspicuous locations throughout the buildings and grounds of each State agency (that is, on bulletin boards or on the State agency's intranet site). The Department of the Treasury shall distribute the policy to State-wide vendors/contractors, whereas each State agency shall distribute the policy to vendors/contractors with whom the State agency has a direct relationship.

VI. COMPLAINT PROCESS

Each State agency shall follow the Model Procedures with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough and

impartial manner. The results of the investigation shall be forwarded to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

Where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

VII. PROHIBITION AGAINST RETALIATION

Retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation.

Following are examples of prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection:

- Termination of an employee;
- Failing to promote an employee;
- Altering an employee's work assignment for reasons other than legitimate business reasons;
- Imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or
- Ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

VIII. FALSE ACCUSATIONS AND INFORMATION

An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, may be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good-faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

IX. CONFIDENTIALITY

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.

X. ADMINISTRATIVE AND/OR DISCIPLINARY ACTION

Any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

XI. TRAINING

All State agencies shall provide all new employees with training on the policy and procedures set forth in this section within a reasonable period of time after each new employee's appointment date. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time. All State agencies shall also provide supervisors with training on a regular basis regarding their obligations and duties under the policy and regarding procedures set forth in this section.

Issued: December 16, 1999
Revised: June 3, 2005
Revised: August 20, 2007
See N.J.A.C. 4A:7-3.1

Attachment B

DISCRIMINATION COMPLAINT PROCESSING FORM

NEW JERSEY DEPARTMENT OF PERSONNEL

INSTRUCTIONS: This complaint form should be filed with the Equal Employment Opportunity/Affirmative Action Officer or the alternate designee for the State department, agency, commission, or State college where you work or applied for employment.

Read Procedures for Reporting and Processing Internal Complaints before completing this form. (see the reverse side & /or next page)

1. Name:		2. Name of State Department, Agency or College:	3. Telephone (Work):																
4. Job Title:		5. Division/Office:	6. Telephone (Home):																
7. Home Address:		8a. Full Name & Title of person(s) you believe discriminated against you:																	
8. Date(s) of discriminatory action(s):																			
9. Basis of Discrimination: <table border="0"><tr><td><input type="checkbox"/> Race</td><td><input type="checkbox"/> Religion</td><td><input type="checkbox"/> Ancestry</td><td><input type="checkbox"/> Retaliation (for having filed a discrimination complaint, participated in a complaint investigation or for opposing a discriminatory practice)</td></tr><tr><td><input type="checkbox"/> Color</td><td><input type="checkbox"/> Creed</td><td><input type="checkbox"/> Disability</td><td></td></tr><tr><td><input type="checkbox"/> Sex/Gender</td><td><input type="checkbox"/> Age</td><td><input type="checkbox"/> Sexual Harassment</td><td><input type="checkbox"/> Liability for Military Service</td></tr><tr><td><input type="checkbox"/> National Origin</td><td><input type="checkbox"/> Marital Status</td><td><input type="checkbox"/> Affectional/Sexual Orientation</td><td><input type="checkbox"/> Familial Status <input type="checkbox"/> Genetic Information</td></tr></table>				<input type="checkbox"/> Race	<input type="checkbox"/> Religion	<input type="checkbox"/> Ancestry	<input type="checkbox"/> Retaliation (for having filed a discrimination complaint, participated in a complaint investigation or for opposing a discriminatory practice)	<input type="checkbox"/> Color	<input type="checkbox"/> Creed	<input type="checkbox"/> Disability		<input type="checkbox"/> Sex/Gender	<input type="checkbox"/> Age	<input type="checkbox"/> Sexual Harassment	<input type="checkbox"/> Liability for Military Service	<input type="checkbox"/> National Origin	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Affectional/Sexual Orientation	<input type="checkbox"/> Familial Status <input type="checkbox"/> Genetic Information
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<input type="checkbox"/> National Origin	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Affectional/Sexual Orientation	<input type="checkbox"/> Familial Status <input type="checkbox"/> Genetic Information																
10. Explain why you feel you have been discriminated against: (COMPLAINANT HAS THE BURDEN OF PROVING THE CHARGE OF DISCRIMINATION)																			
11. Complainant's Signature: _____ Date: _____																			
<input type="checkbox"/> ADDITIONAL SHEETS ATTACHED																			
12. Have you filed a discrimination complaint with the • N.J. Division on Civil Rights? <input type="checkbox"/> YES <input type="checkbox"/> NO • U.S. Equal Employment Opportunity Commission? <input type="checkbox"/> YES <input type="checkbox"/> NO		13. Have you filed a grievance on the issues / personnel actions described? <input type="checkbox"/> YES <input type="checkbox"/> NO																	
14. Completion of this part is voluntary. The information is to be used only for State and Federal record keeping and reporting requirements: SEX: <input type="checkbox"/> Male <input type="checkbox"/> Female RACE: <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White ETHNICITY: <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino																			
DO NOT WRITE BELOW THIS LINE																			
EEO/AA Officer Signature: _____		Date Received: _____																	



Personnel

www.state.nj.us/personnel

DPF-481 Revised 10-02-03

Richard J. Codey, Acting Governor

Rolando Torres, Commissioner

STATE OF NEW JERSEY

Procedures For Reporting and Processing Internal Complaints Alleging Discrimination, Harassment Or Hostile Environments In The Workplace

Each State department, commission, State college, and authority (hereafter referred to as an appointing authority) is responsible for implementing this general procedure. In this document, unless otherwise noted, references to employees (as the complainant) includes applicants for employment and other persons doing business with the State.

1. All employees have the right and are encouraged to immediately report suspected violations of the State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace (N.J.A.C. 4A:7-3.1).
2. Employees can report incidents of discrimination/harassment to the EEO/AA Officer or any supervisory employee in an appointing authority. Employees may also report such incidents to the EEO/AA Officer's designated alternate.
3. Employees should make every effort to report complaints promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily continue to subject the person to the conduct about which he/she is complaining.
4. Supervisory employees should immediately report all alleged violations of the State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace, whether reported by an employee or observed directly, to the EEO/AA Officer.
5. If reporting a complaint to any of the persons set forth above presents a conflict of interest, the complaint may be filed directly with the Department of Personnel, Division of EEO/AA, P.O. Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision making process.
6. While not mandatory, in order to facilitate a prompt, thorough and impartial investigation, all complainants should fill out a Discrimination Complaint Processing Form (DPF-481).
7. During the initial intake of a complaint, the EEO/AA Officer or alternate designee will obtain information regarding the workplace discrimination, harassment or hostile environment complaint, and determine if intermediate protective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination, Harassment, and Hostile Environments in the Workplace.
8. At the EEO/AA Officer's direction, when necessary, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place.
9. An investigatory report will be prepared by the EEO/AA Officer or his or her designee when the investigation is completed. The report will include: (a) a summary of the complaint; (b) summary of the facts developed through the investigation and (c) an analysis of the allegations and the facts. The investigatory report will be submitted to the Appointing Authority Head.
10. The Appointing Authority Head will review the investigatory report issued by the EEO/AA Officer or alternate designee, and make a determination as to whether the allegation of a violation of the State's Policy Prohibiting Discrimination, Harassment, and Hostile Environments in the Workplace has been substantiated. If a violation has occurred, the Appointing Authority Head will determine the appropriate corrective measures necessary to immediately remedy the violation.
11. The Appointing Authority Head will issue a final letter of determination to all parties, containing the results of the investigation and, if applicable, setting forth the right of appeal to the Merit System Board. The Division of EEO/AA, Department of Personnel shall also be furnished with a copy of the final letter of determination.
 - a. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in 7. above is completed.
 - b. The time for completion of the investigation and issuance of the final letter of determination may be extended by the Appointing Authority Head for up to 60 additional days in cases involving exceptional circumstances. The Appointing Authority Head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.
12. A complainant in the State career, senior executive or unclassified service or who is an applicant for employment, may appeal the final determination of the Appointing Authority Head, to the Merit System Board, PO Box 312, Trenton, NJ 08625 within 20 days of receipt of the final determination letter.

The person(s) against whom the complaint is made (if serving in the State career, senior executive or unclassified service) may appeal the final determination of the Appointing Authority Head to the Merit System Board within 20 days of receipt of the final determination that a violation of the policy has been substantiated. However if disciplinary action is recommended, the procedures for the appeal of disciplinary action shall be followed.

The appeal should contain a concise explanation of the disagreement. Regulations governing the appeal process are set forth at N.J.A.C. 4A:7-3.3 and N.J.A.C. 4A:2-1.1.
13. To the extent practical and appropriate under the circumstances, confidentiality, will be maintained throughout all phases of the intake, investigation and remediation process. Any breach of confidentiality by any party involved in this procedure may be considered an act of obstruction, and may subject that employee to disciplinary action.
14. Any employee can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. You should contact the specific agency to obtain exact time frames. The deadlines run from the last date of the alleged act of harassment or discrimination, not from the date that the internal workplace discrimination/harassment complaint to the employer is resolved.

Employees may file complaints with the following agencies:

Division on Civil Rights
N.J. Department of Law & Public Safety
Within 180 days of the discriminatory act.

Trenton Regional Office
140 East Front Street
6th Floor - P.O. Box 089
Trenton, New Jersey 08625-0089
(609) 292-4605

Camden Regional Office
One Port Center
2 Riverside Drive, Suite 402
Camden, NJ 08103
(856) 614-2550

Paterson Regional Office
100 Hamilton Plaza, Suite 800
Paterson, NJ 07505
(973) 977-4500

Atlantic City Satellite Office
26 South Pennsylvania Avenue
Atlantic City, NJ 08401
(609) 441-3100

Newark Regional Office
31 Clinton Street
P.O. Box 46001
Newark, NJ 07102
(973) 648-2700

United States
Equal Employment Opportunity Commission (EEOC)
Within 300 days of the discriminatory act.

Philadelphia District Office
The Bourse Building, Suite 400
21 S. Fifth Street
Philadelphia, PA 19106-2515
(215) 440-2600

Newark District Office
1 Newark Center
21st Floor
Newark, NJ 07102-5233
(973) 645-6385

Attachment C

Department of Human Services

Guidelines for Religious Accommodations in the Workplace

**This document was produced by the Office of Legal and Regulatory Affairs
September 23, 2009**

These guidelines were drafted to assist employees through the process of addressing requests for religious accommodations in the workplace. It is the intent of the Department of Human Services to provide for such accommodations where they do not cause an undue hardship to the employer's daily operations. These guidelines were drafted in consultation with the Department of Law and Public Safety, Division of Law.

PROCEDURES

A. The Request

(i) Employees. All employees requesting religious accommodations must state: 1) the need for accommodation and 2) that the accommodation is being requested due to a conflict between religious obligations and work. Requests **should** be in writing (to avoid confusion) and submitted to the Human Resources office.

(ii) Applicants for Employment. In order to fully participate in the application process, an applicant for employment needing a religious accommodation must make the prospective employer aware of: 1) the need for a religious accommodation and 2) that the accommodation is being requested due to a conflict between a religious obligations and the application process. Requests should be in writing (to avoid confusion) and submitted to the Human Resources office.

(iii) Requests Shall be Referred to the Human Resources Office. All requests for religious accommodations shall be sent to the Human Resources office ("HR"). If a request is initially made to a supervisor or other staff member, it must be forwarded to HR, even when a supervisor feels the accommodation can be granted. It is important that HR be kept informed of employees' accommodation status and maintain documentation of the request, the response and related communications.

B. The Interactive Process

When a request is made, the employer and employee should engage in an interactive process to clarify what is being requested and what options may be available to allow for an accommodation. Each request will be examined on an individual, case-by-case, basis.

Employer-employee cooperation and flexibility are key to the search for a reasonable accommodation. This means both will have to be patient, willing to provide information and not make assumptions about what the other person "knows".

If the accommodation solution is not immediately apparent, the employer should discuss the request with the job applicant or employee to determine what accommodations might be effective. If the employer requests additional information to determine whether the accommodation can be granted, the employee should provide it.

If the employer does not grant the employee's preferred accommodation, but instead provides an alternative accommodation, the employee must cooperate by attempting to meet his religious needs through the employer's proposed accommodation, if that is feasible.

A reasonable effort should be made to grant accommodation requests. However, the employer is not required to accommodate the employee if, after engaging in a bona fide effort, the employer determines that "undue hardship" would result from such accommodation.

C. Alternative Accommodations

The employer is not required to grant the employee's preferred accommodation. Employers may offer alternative accommodations.

One method of accommodation the employer may consider is a shift swap. In those situations where a shift swap is feasible, the employer may post a notice for 7 days requesting another staff member in a similar title to voluntarily cover the requested day(s) off. The employer will facilitate this action to allow for employees with similar jobs to swap. In addition, in order to grant this accommodation, the employee may be required to change

units. Other possible accommodations, include but are not limited to, schedule changes, use of leave time, reassignments, making exceptions to dress and grooming policies, and making unused space available for religious observances during break times.

D. Undue Hardship

“Undue hardship” means an accommodation requiring unreasonable expense or difficulty, unreasonable interference with the safe or efficient operation of the workplace, a violation of a bona fide seniority system, or a violation of any provision of a bona fide collective bargaining agreement.

In determining whether the accommodation constitutes an undue hardship, the facts considered shall include: (i) the identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer; (ii) the number of individuals who will need the particular accommodation for a sincerely held religious observance or practice; and (iii) for an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

An accommodation shall be considered to constitute an undue hardship if it will result in the inability of an employee to perform the essential functions of the position in which he or she is employed.

E. The Determination

Employees should be notified of the accommodation determination, whether granted or denied, in writing. Employees who have been denied a request for an accommodation, or feel that the accommodation provided is not adequate, may contact the Office of Legal and Regulatory Affairs to request a review of the determination of their request for religious accommodation.

Contact Information: **Office of Legal and Regulatory Affairs**
222 South Warren Street
P.O. Box 700
Trenton, New Jersey 08625-0700
(609)984-5486